

# Morgan Lewis

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## **VIA HAND DELIVERY, ECFS AND ELECTRONIC MAIL**

December 27, 2018

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: REQUEST FOR CONFIDENTIAL TREATMENT – Docket No. 03-123**  
**ClearCaptions, LLC Section 64.606(g) Annual Report**

Dear Ms. Dortch:

ClearCaptions, LLC ("ClearCaptions"), pursuant to Sections 0.457 and 0.459 of the rules of the Federal Communications Commission ("Commission"), respectfully requests confidential treatment of certain information contained in the enclosed Annual report pursuant to Section 64.606(g) of the Commission's rules.

An original and one copy of the ClearCaptions' Annual Report in confidential form are submitted. ClearCaptions is also submitting via ECFS an original and one copy of the ClearCaptions' Annual Report in redacted form in Docket No. 03-123. Confidential versions will also be sent by electronic mail to Commission staff.

ClearCaptions requests confidential treatment of all information contained after the heading **\*\*\*BEGIN CONFIDENTIAL\*\*\*** and before the close heading **\*\*\*END CONFIDENTIAL\*\*\*** (the "Confidential Information"). As described below, all material contained inside those headings is company-specific, proprietary commercial and business information that is not customarily disclosed to the public or within the industry and is subject to Exemption 4 of the Freedom of Information Act ("FOIA").<sup>1</sup> All of the Confidential Information has been redacted from the version electronically filed with the Commission.

In support of this request and pursuant to Section 0.459(b) of the Commission's rules,<sup>2</sup> ClearCaptions states:

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<sup>1</sup> 47 C.F.R. § 0.457(d); 5 U.S.C. § 552(b)(4).

<sup>2</sup> 47 C.F.R. § 0.459(b).

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**1. Identification of the specific information for which confidential treatment is sought.**

ClearCaptions requests confidential treatment of all information contained after the heading **\*\*\*BEGIN CONFIDENTIAL\*\*\*** and before the close heading **\*\*\*END CONFIDENTIAL\*\*\***. All of the information designated as the Confidential Information is proprietary commercial and business information that is not customarily disclosed to the public or within the industry and is confidential commercial information under Exemption 4 of the FOIA.<sup>3</sup> This includes information about internal business operations, practices, and structures that would cause harm to ClearCaptions if disclosed. Accordingly, pursuant to Section 0.459(a) of the Commission's rules, ClearCaptions requests that such information not be made routinely available for public inspection.

**2. Identification of the Commission proceeding in which the information is submitted or a description of the circumstances giving rise to the submission.**

ClearCaptions is providing this information in connection with its annual reporting obligation in accordance with 47 C.F.R. § 64.606(g).

**3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.**

The Confidential Information at issue is proprietary commercial information that is specific to ClearCaptions, is safeguarded from competitors, and is not made available to the public. This includes information about internal business operations, practices, and structures that would cause harm to ClearCaptions if disclosed. If the Confidential Information is not protected from disclosure, other relay providers could utilize the information against ClearCaptions.

**4. Explanation of the degree to which the information concerns a service that is subject to competition.**

The Confidential Information concerns the provision of competitive IP CTS. The Confidential Information is being provided to the Commission to describe ClearCaptions' business, operational, and market details.

**5. Explanation of how disclosure of the information could result in substantial competitive harm.**

The Confidential Information constitutes highly sensitive commercial information "which would customarily be guarded from competitors" pursuant to 47 C.F.R § 0.457. The disclosure of the Confidential Information could cause substantial competitive harm to ClearCaptions. Because other relay providers would have access to significant information

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<sup>3</sup> 5 U.S.C. § 552(b)(4).

regarding ClearCaptions' current capabilities, they could use the Confidential Information to ClearCaptions' disadvantage in the marketplace.

**6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure.**

ClearCaptions routinely treats the Confidential Information as confidential and exercises significant care to ensure that such information is not disclosed to its competitors or the public.

**7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

ClearCaptions does not make the Confidential Information available to the public. This Confidential Information has not been previously disclosed to third parties, except where required by the Commission and the TRS Fund Administrator, each of whom protect the confidentiality of such submissions.

**8. Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.**

ClearCaptions requests that the Confidential Information be treated as confidential on an indefinite basis as it cannot identify a date certain on which this information could be disclosed without causing competitive harm to ClearCaptions.

**9. Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

The Confidential Information contains proprietary commercial information that ClearCaptions will safeguard as necessary.

Should you have any questions concerning the foregoing request, please contact the undersigned.

Respectfully submitted,

*/s/ Tamar Finn*

Tamar Finn  
Danielle Burt

Counsel ClearCaptions, LLC

cc (via email): Eliot Greenwald  
Bob Aldrich  
Michael Scott  
TRSreports@fcc.gov



**REDACTED – FOR PUBLIC INSPECTION**

December 27, 2018

**VIA HAND DELIVERY, ECFS, AND ELECTRONIC MAIL**

Marline H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Eliot Greenwald  
Disability Rights Office  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
*Email to TRSreports@fcc.gov and Eliot.Greenwald@fcc.gov*

**Re: ClearCaptions, LLC Section 64.606(g) Annual Report  
CG Docket No. 03-123**

Dear Ms. Dortch and Mr. Greenwald:

Pursuant to Section 64.606(g) of the rules of the Federal Communications Commission (“FCC” or “Commission”), ClearCaptions, LLC (“ClearCaptions”) submits its Annual Report demonstrating compliance with the mandatory minimum standards established for Internet-based TRS providers under Section 64.604 of the Commission’s rules and containing the information required by Section 64.606.<sup>1</sup>

ClearCaptions is concurrently filing an updated application for certification as a provider of Internet-based TRS (the “ClearCaptions’ Updated Application”). A copy of ClearCaptions’ Updated Application in confidential form is attached as Schedule 1, and a copy of the ClearCaptions’ Updated Application in redacted form is attached as Schedule 2.

**I. Update to Section 64.606(a)(2) of the Commission’s Rules**

In accordance with Section 64.606(g)(1), this Annual Report updates where necessary information and documentation contained in ClearCaptions’ Internet-Based TRS Certification Application submitted on April 28, 2016, as amended on March 15, 2017, December 8, 2017, May 2, 2018, and August 21, 2018 (collectively, the “ClearCaptions Certification Application, as amended”).<sup>2</sup> All of these updates are included in the ClearCaptions’ Updated Application

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<sup>1</sup> See 47 C.F.R. §§ 64.604, 64.606.

<sup>2</sup> *ClearCaptions, LLC, Internet-Based TRS Certification Application*, CG Docket No. 03-123 (filed Apr. 18, 2016), *ClearCaptions, LLC, Amendment To Internet-Based TRS Certification*



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submitted concurrently with this filing. Where no update is provided, ClearCaptions certifies that there are no changes to the information and documentation submitted in ClearCaptions' Certification Application, as amended.

**(i) A description of the forms of Internet-based TRS to be provided;  
(47 C.F.R. § 64.606(a)(2)(i))**

ClearCaptions provides Internet Protocol captioned telephone service ("IP CTS").<sup>3</sup>

**(ii) A detailed description of how the applicant will meet all non-waived mandatory minimum standards applicable to each form of TRS offered;  
(47 C.F.R. § 64.606(a)(2)(ii))**

ClearCaptions certifies that there are no changes to the description as to how ClearCaptions will meet all non-waived mandatory minimum standards provided in Section III of ClearCaptions Certification Application, as amended for IP CTS, except the updates listed below to address the changes in the mandatory minimum standards set forth in 47 C.F.R. § 64.604(c)(10), § 64.604(c)(11)(v), and § 64.604(c)(13) made by the Commission's 2018 IP CTS Order.<sup>4</sup>

<b>IP CTS Settings</b> 47 C.F.R. § 64.604(c)(10)		Each IP CTS device distributed by ClearCaptions includes a button, icon, or comparable feature that is easily operable and requires only one step to turn on captions. Volume control and other amplification features can be adjusted separately and independently of the caption feature.
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*Application*, CG Docket No. 03-123 (filed Mar. 15, 2017), *ClearCaptions, LLC, Second Amendment To Internet-Based TRS Certification Application*, CG No. Docket 03-123 (filed Dec. 12, 2017); *ClearCaptions, LLC, Third Amendment To Internet-Based TRS Certification Application*, CG No. Docket 03-123 (filed May 2, 2018); *ClearCaptions, LLC, Third Amendment To Internet-Based TRS Certification Application*, CG No. Docket 03-123 (filed August 21, 2018); *see also* 47 C.F.R. § 64.606(g)(1).

<sup>3</sup> *Notice of Conditional Grant of Application of Purple Communications, Inc. for Recertification as a Provider of Video Relay and Internet Protocol Relay Service Eligible for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund*, Public Notice, DA 12-4, CG Docket No. 10-51, 27 FCC Rcd 112 (Jan. 4, 2012); *Notice of Conditional Certification for Purple Communications, Inc. to provide Internet Protocol Captioned Telephone Relay Service*, Public Notice, DA 15-1627, CG Docket No. 10-51, 29 FCC Rcd 13728 (Nov. 7, 2014); *Notice Transfer of IP CTS Certification from Purple Communications, Inc. to ClearCaptions, LLC*, CG Docket Nos. 10-51, 03-123, Letter (Dec. 29, 2016).

<sup>4</sup> *In re Misuse of Internet Protocol (IP) Captioned Tel. Serv.*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800 (2018) (hereinafter "2018 IP CTS Order").

<b>IP CTS Equipment Records</b> 47 C.F.R. § 64.604(c)(11)(v)		<p>ClearCaptions is ready to comply, once effective, with the requirement to ensure that its informational materials and websites about IP CTS include the following language in a prominent location in a clearly legible font: “FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING INTERNET PROTOCOL (IP) CAPTIONED TELEPHONES WITH THE CAPTIONS TURNED ON. IP Captioned Telephone Service may use a live operator. The operator generates captions of what the other party to the call says. These captions are then sent to your phone. There is a cost for each minute of captions generated, paid from a federally administered fund.”</p>
<b>Prohibited Practices</b> 47 C.F.R. § 64.604(c)(13)		<p>ClearCaptions is not engaged in any practice that it knows or has reason to know will cause or encourage false or unverified claims for TRS Fund compensation; unauthorized use of IP CTS; the making of IP CTS calls that would not otherwise be made; or the use of IP CTS by persons who do not need the service in order to communication in a functionally equivalent manner.</p> <p>To the extent ClearCaptions knows or has reason to know that any minutes of service are not eligible for compensation for any of the above-listed reasons or from use of IP CTS by an individual who does not need captions to communicate in a functionally equivalent manner, it will not seek payment from the TRS Fund.</p> <p>To the extent ClearCaptions becomes aware of any of the above-listed practices being or having been committed by any person, ClearCaptions is ready to comply, once effective, with the requirement to, as soon as practicable, report such practices to the Commission or to the TRS Fund Administrator.</p>

- (B) **For all applicants, a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, members of its board of directors, general partners (in the case of a partnership), and managing members (in the case of a limited liability company); (47 C.F.R. § 64.606(a)(2)(ii)(B))**

This information is provided in Exhibit A.

- (C) **For all applicants, a list of the number of applicant's full-time and part-time employees involved in TRS operations, including and divided by the following positions: executives and officers; video phone installers (in the**

**case of VRS), communications assistants, and persons involved in marketing and sponsorship activities; (47 C.F.R. § 64.606(a)(2)(ii)(C))**

This information is provided in Exhibit B.

- (D) For all applicants, copies of employment agreements for all of the provider's employees directly involved in TRS operations, executives, and communications assistants, and a list of names of employees directly involved in TRS operations, need not be submitted with the application, but must be retained by the applicant for five years from the date of application, and submitted to the Commission upon request; (47 C.F.R. § 64.606(a)(2)(ii)(D))**

ClearCaptions retains copies of employment agreements as required and will submit the same to the Commission upon request.

- (E) For all applicants, a list of all sponsorship arrangements relating to Internet-based TRS, including on that list a description of any associated written agreements; copies of all such arrangements and agreements must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request; (47 C.F.R. § 64.606(a)(2)(ii)(E))**

This information is provided in Exhibit C.

- (F) In the case of applicants to provide IP CTS or IP CTS providers, a description of measures taken by such applicants or providers to ensure that they do not and will not request or collect payment from the TRS Fund for service to consumers who do not satisfy the registration and certification requirements in §64.604(c)(9), and an explanation of how these measures provide such assurance; (47 C.F.R. § 64.606(a)(2)(ii)(F))**

ClearCaptions certifies that there are no changes to the registration and certification information provided in Section X of ClearCaptions Certification Application, as amended.

- (iii) A description of the provider's complaint procedures;  
(47 C.F.R. § 64.606(a)(2)(iii))**

**\*\*\*BEGIN CONFIDENTIAL\*\*\***



**\*\*\*END CONFIDENTIAL\*\*\***

**(iv) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules. (§ 64.606(a)(2)(iv))**

ClearCaptions states that it will file annual compliance reports demonstrating continued compliance with the Commission's rules governing Telecommunications Relay Service and containing the information required by Section 64.606(g) of the Commission's rules.

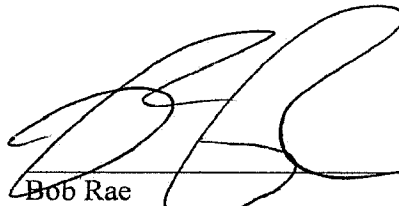
**II. CPNI Certification and Statement (47 C.F.R. § 64.5109(e))**

ClearCaptions attaches here as Exhibit 1 ClearCaptions Annual CPNI Certification and Statement.



**III. Certification (47 C.F.R. §§ 64.606(g)(2), see also 47 C.F.R. 64.606(a)(2)(v))**

I swear under penalty of perjury that I am Bob Rae, President and CEO, an officer of the above-named reporting entity, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

A handwritten signature in black ink, appearing to be 'Bob Rae', written over a horizontal line.

Bob Rae  
CEO & President  
ClearCaptions, LLC  
3001 Lava Ridge Court  
Suite 100  
Roseville, CA 95661

Dated: December <sup>27</sup>~~1~~, 2018

Exhibits

**Exhibit A**

**Corporate Stakeholders, Structure, and Officers and Organizational Structure**

ClearCaptions LLC is a limited liability company. ClearCaptions LLC is owned by multiple funds, all of which are controlled by Reservoir Capital Partners, L.P.<sup>5</sup> Reservoir Capital Partners, L.P. is a Managing Member of Reservoir VRS-CC SPV, LLC.

The executives and officers of ClearCaptions, LLC are as follows:

- Bob Rae, Chief Executive Officer
- John Kelleher, Chief Financial Officer
- Corrine Perritano, Chief Operating Officer
- Rita Beier Braman, Vice President of Text Operations and National Quality Assurance
- Michael Strecker, Vice President of Regulatory & Strategic Policy
- Monique Dirstine, Director of Human Resources

ClearCaptions, LLC's has the following Board of Managers:

- AJ Brohinsky
- Craig Huff
- Gregg Zeitlin
- Eric Engler

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<sup>5</sup> See *ClearCaptions, LLC, Notification of Non-Substantive Change to ClearCaptions' Ownership Structure*, CG Docket Nos. 10-51 & 03-123 (Mar. 9, 2017); see also *ClearCaptions, LLC, Notification of Non-Substantive Change to ClearCaptions' Ownership Structure*, CG Docket Nos. 10-51 & 03-123 (Oct. 11, 2017).

**Exhibit B**

**Number of ClearCaptions LLC IP CTS Employees**

**\*\*\*BEGIN CONFIDENTIAL\*\*\***

**\*\*\*END CONFIDENTIAL\*\*\***

**Exhibit C**

**Sponsorship Lists**

**\*\*\*BEGIN CONFIDENTIAL\*\*\***







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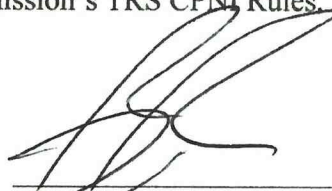
**Exhibit 1**

**CPNI Certification and Statement**

**2018 Annual TRS CPNI Certification: 47 C.F.R. § 64.5109**

I, Bob Rae, certify that I am an officer of ClearCaptions, LLC (the "Company"), and I have personal knowledge that since December 16, 2017 the Company has established operating procedures that are adequate to ensure compliance with the Commission's TRS CPNI Rules (see 47 C.F.R. §64.5101 *et seq.*).

Attached to this certification is an accompanying statement that explains how the Company's operating procedures ensure that it is in compliance with the Commission's TRS CPNI Rules. The statement includes an explanation from December 16, 2017 and following of any actions taken against data brokers, a summary of all customer complaints received concerning the unauthorized release of CPNI, and a report detailing all instances where the TRS provider, or its agents, contractors, or subcontractors, used, disclosed, or permitted access to CPNI without complying with the procedures specified in Commission's TRS CPNI Rules.



Bob Rae  
CEO & President  
ClearCaptions, LLC  
3001 Lava Ridge Court  
Suite 100  
Roseville, CA 95661

Dated: December 27, 2018

**2018 Annual TRS CPNI Compliance Statement: 47 C.F.R. § 64.5109**

**\*\*\*BEGIN CONFIDENTIAL\*\*\***

**\*\*\*END CONFIDENTIAL\*\*\***